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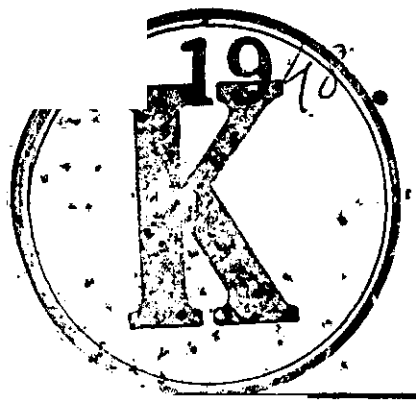

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File No. C. Dangerous Drugs/48

P 4 E Legal **DEPARTMENT**

-A **BRANCH**

Subject:— Opinions under the Bombay Dangerous Drugs Act, 1935

File No.
Std. Sectt. Slip 24 B e.

C. Dangerous Drugs/48

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C O N T E N T S

Legal Department File No. O. Dangerous Drugs/1948

Sr. No.	Roll/O. No.		Subject	Pages
			Opinions under the Bombay Dangerous Drugs Act, 1935.	
1.	9973 9-8-48	11528 6-12-48	Rule 33 Authorization under	1-9

Mjr/31/5

5 Cs.

7-6-56

Submitted with reference to R.D. note at pages 3 to 7 ante.

2. The Commr. of Excise, Bombay, observes:-

"It has been represented to me by the Medical Practitioners that considerable time is lost in obtaining transport autherisations for manufactured drugs required by them. At present the autherisations are granted by the Superintendents of Excise who forward the applications to the Excise Inspectors for their remarks. In order to avoid delay caused by this precedure, I am autherising the Excise Inspectors and Assistant Inspectors in indepedent charges to grant, in the case of approved medical practitioners only, authersitions in Form D.D. 6 under Rule 33 of the Bombay Dangerous Drugs Rules, 1935, for the transport of manufactured drugs.

Autherisations under Rule 33 can be granted by a Collector or any other Officer autherised in this behalf. The rule is silent as to the authority who should authorise such officers. On the analogy of Rule 30 of these Rules, this authority is, I presume, the Commissioner of Excise. If this view is not correct my action in authorising the Excise Inspectors and Assistant Inspectors to grant D.D. 6 authorisations to the approved Practitioners may be approved and the Rule 33 may be amended as follows:

A comma and the words " by the Commissioner of Excise," may be added after the word "behalf" occurring twice in this rule."

In this respect the R.D. is of opinion that the authority to empower is the Provl. Govt. and therefore the rule must be amended and the action approved. But the Under Secy R.D. concurs with the Commissioner.

3. Rule 33 of the Bombay Dangerous Drugs Rules, 1935 provides:-

"When any manufactured drug (other than prepared opium) is to be transported, the person intending to transport the same shall first obtain a transport authorization in Form DD 6 here to annexed, from the Collector of such other officer as may be authorised in this behalf at the place to which the drug is to be transported and present it to the Collector or such other officer as may be authorised in this behalf at the place from which the drug is to be transported, who hsall complete the authorization and allow the removal of the drug, provided that the quantity of the drug does not exceed the quantity which such person may lawfully posses

The Collector or such other officer cannot exercise their authority unless they are specifically authorized.

Rule 41 provides:

P.T.O.

(1) For the purposes of these rules the Collector be deemed to be subordinate to the Commissioner Excise. Any order of the Collector under these rules ... liable to be modified or cancelled by the Commr. of Excise either on an appeal by the party aggrieved or otherwise.

(2) An appeal shall lie to the Govt. from any order passed by the Commr. of Excise, except in the case of any order passed by such authority on appeal from an order passed by any officer subordinate to such authority."

Reading this rule the Collector is subordinate to the Commr. of Excise and it will be the Commr. who will be the proper authority to empower. An appeal from an order passed by the Commr. will lie to the Provl. Govt. Since the Prov. Govt. is the final appellate authority from an order passed by the Commr. it will be the Commr. who is empowered to authorise under rule 33 of the Rules and not theProv. Govt.

The view taken by the Commr. and concurred in by the Under Secy. R.D. is correct.

Sd/-
4/11/48

A.A.S.

The term "Collector" as defined in clause (3) of rule 2 of the Bombay Dangerous Drugs Rules, 1935, means the Chief officer in charge of the revenue administration of a district for the time being, and includes any officer specially authorised by Govt. to exercise throughout the Province of Bombay or in any specified area there in All or any of the powers of a Collr. under these rules. Wherever authority is conferred on the Commr or Collr. to empower other officer to exercise powers under these rules, provision to that effect is specifically made (cf. rules 30 and 31). Rules 33 however, does not empower either the Commr. or Collr. to authorise other officer to issue transport authorisation in Form DD. 6.The words "the Collector or such other officer as may be authorised in this behalf" read in light of the definition of the term "Collector" in rule 2(3) , imply that such other officer would be the person authorised by Govt. to exercise the

powers under rule 33. The view of the Commr. of Excise does not appear to be correct. Since, however, the Commr. of Excise has already authorised the Excise Inspectors and Asstt. Inspectors to grant D.D. 6 authorisations to the approved practitioners, he suggests that rule 33 may be amended as proposed by him. Even if the rule is now amended, it cannot habe retrospective effect so as to validate the action of the officer prior to the date of amendment of the rule.

Sd/-
1Ø12

A.L.R. Reply may be:-

The view taken by R.D. about authorization under rule 33 of the Bom. Dangerous Drugs Rules, 1935 is correct. If the Commissioner of Excise is to be given the power to authorise under rule 33, the rule requires to be amended.

Sd/- R.T. Katarki
2/12

R.L.A.

Sd/- P.M.Lad
2/12

U.R. to R.D. No. 11528 dated 6/12/1948

Mjr/31/5
4 Cs.